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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,892	12/22/2003	Samy Ashkar	CMCC 512 DIV	2155

23579 7590 01/31/2006

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EXAMINER	
LUKTON, DAVID	
ART UNIT	**PAPER NUMBER**
1654	

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/743,892	ASHKAR, SAMY	
	Examiner	Art Unit	
	David Lukton	1654	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *none*.
   Claim(s) objected to: *none*.
   Claim(s) rejected: *15 and 18*.
   Claim(s) withdrawn from consideration: *21,22,26,29-31 and 34*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheets.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Advisory Action

The response filed 1/17/06 proposes to amend claims 18, 21, 22, 26 & 29. However, this amendment will not be entered.

Claims 15, 18, 21, 22, 26, 29-31, 34 remain pending. Claims 21, 22, 26, 29-31, 34 remain withdrawn from consideration.

✦

The following is a quotation of 35 USC. §103 which forms the basis for all obviousness rejections set forth in the Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.
>
> This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made, absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103.

Claims 15 and 18 are rejected under 35 U.S.C. §103 as being unpatentable over Reich (USP 5124155) in view of Kiefer (*Nucleic Acids Res* 17, 3306, 1989) or

Pierschbacher (USP 5,880,092) in view of Kiefer (*Nucleic Acids Res* 17, 3306, 1989).

As indicated previously, Reich and Pierschbacher both teach that RGD-containing peptides are effective to promote wound healing. Neither of these references, however, disclose that RGD is an "osteopontin-derived" peptide. Kiefer provides the amino acid sequence of osteopontin. As is evident, this peptide contains the subsequence RGD. Accordingly, RGD is an "osteopontin-derived" peptide.

In response to the foregoing, applicants have argued that the claims are not drawn to cell adhesion peptides but to chemotactic peptides. Applicants have also argued that there is no correlation between the propensity of a peptide to adhere to a given protein, and the propensity of that peptide to migrate up a gradient of increasing concentrations of that protein. The examiner does not necessarily agree with applicants' assertion. Furthermore, it is applicants who believe that if a peptide is derived from osteopontin, it will be chemotactic. There is no question about the propensity of the Reich and Pierschbacher peptides to promote wound healing. Nor do the claims even require that the efficacy of the peptides in promoting wound healing is due to chemotaxis. Suppose that one induced a wound in each of two rats, and subsequently applied a peptide of Reich or Pierschbacher to the wounded area. And suppose that the

wound healing progress in the "first rat" is being observed by a dermatologist who believes that the Reich and Pierschbacher peptides can induce chemotaxis; the "second rat" is being observed by a dermatologist who believes that the Reich and Pierschbacher peptides cannot induce chemotaxis. In applicants' opinion, how would the course of wound healing in the two rats differ, and why? Again, it is applicants who believe that if a peptide is derived from osteopontin, it will be chemotactic. If applicants now have evidence that osteopontin-derived peptides are not chemotactic, applicants should present the same.

Perhaps if the claims were drawn to a method of inducing chemotaxis, applicants arguments would be on firmer ground. But as the claims stand, they are rendered obvious by the references.

✧

Claims 15 and 18 are rejected under 35 U.S.C. §103 as being unpatentable over Carney (USP 6,630,572) in view of Kiefer (*Nucleic Acids Res* 17, 3306, 1989).

As indicated previously, Carney discloses that peptides containing the RGD subsequence are effective to promote wound healing. See, for example, claims 1-16 of the patent. Carney does not disclose that RGD is an "osteopontin-derived" peptide. Kiefer provides the amino acid sequence of osteopontin. As is evident, this peptide contains the subsequence RGD. Accordingly, RGD is an "osteopontin-derived" peptide.

The examiner's arguments are the same as those given above

The rejection is maintained.

✧

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached at (571)272-0974. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

DAVID LUKTON
PATENT EXAMINER
GROUP 1800